

ROADMAP

TITLE OF THE INITIATIVE	Inclusion of exemption provisions for ports and airports in the Commission Regulation declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty ("General Block Exemption Regulation – GBER") - REFIT		
LEAD DG – RESPONSIBLE UNIT – AP NUMBER	DG COMP / UNIT 03	DATE OF ROADMAP	02/2016
LIKELY TYPE OF INITIATIVE	Legislative simplification initiative		
INDICATIVE PLANNING			
ADDITIONAL INFORMATION			
This indicative roadmap is provided for information purposes only and can be subject to change. It does not prejudice the final decision of the Commission on whether this initiative will be pursued or on its final content and structure.			

A. Context, Subsidiarity Check and Objectives

Context
<p>The Commission adopted a new General Block Exemption Regulation (GBER) in 2014 as an integral building block of State Aid Modernisation ("SAM"). The GBER declares certain aid measures compatible with the internal market and exempt from prior notification to the Commission. The criteria of the GBER determine, in particular, eligible beneficiaries, maximum aid intensities (i.e. the maximum proportion of the eligible costs of a project that can benefit from state aid) and eligible expenses. These criteria are derived from the Commission's market experience and decision making practice. The GBER plays a crucial role in simplifying and clarifying rules, cutting red tape and allowing for well-defined projects to go ahead as fast as possible. It also allows the Commission to focus on the potentially most distortive cases.</p> <p>In recital 1 of the GBER, it is announced that the Commission envisages including ports and airports in the GBER, which have so far not been included, as soon as sufficient case experience has been collected. This initiative aims at including in the GBER certain investment aid for ports and airports as well as at introducing some clarifications on outermost regions.</p> <p>The initiative is aimed at reducing administrative burden and is part of the Regulatory Fitness and Performance of EU Legislation (REFIT) agenda. It facilitates and provides legal certainty for investments in port and airport infrastructure, in line with the Commission's objective to stimulate investment in order to boost growth and job creation.</p>
Issue
<p>Under the EU State aid rules, Member States in principle have to notify State aid measures to the Commission before implementation. The measures can only be implemented once the Commission has approved them. The Commission can exempt measures from this obligation, provided that certain conditions are fulfilled, which ensure that the measures are compatible with the internal market. The exempted measures must be simply communicated to the Commission, but are not subject to a stand-still clause and can be quickly implemented by public authorities.</p> <p>Such exemption provisions play a crucial role in reducing administrative burden for public authorities and other stakeholders (such as investors in a large variety of infrastructures), as well as the Commission. At the same time they provide legal certainty for the measures. They exist for a wide variety of measures, but are to date missing for ports and airports.</p> <p>This initiative will also provide the opportunity for limited but necessary technical corrections to the GBER, the need of which has become apparent during the first year of its implementation. In particular, in view of the difficulties in application of the GBER provisions as regards outermost regions, the Commission will include some clarifications on the application of State aid rules in this area</p>
Subsidiarity check

State aid is normally forbidden by the Treaty, unless it contributes to achieve specific objectives of common interest. The application of State aid rules falls within the exclusive competence of the Commission. Article 108(4) TFEU allows the Commission to adopt provisions exempting measures from prior notification to the Commission, only within the scope and limits set by the Council in Council Regulation (EU) 2015/1588 of 13 July 2015.

Main policy objectives

This initiative aims to simplify the application of State aid rules, thus reducing administrative burden and costs and speeding up the implementation of projects. By including aid measures for ports and airports into the GBER, Member States will no longer have to notify the measures to the Commission and wait for the approval of the Commission before they can start implementation.

The Commission aims at codifying its existing decision-making practice on airports and ports. This will increase transparency in the handling of cases in these sectors. By adopting straightforward compatibility rules in the GBER, the Commission will give a clear indication of the conditions to be observed in order to provide legal certainty and to be able to implement the measures quickly. In addition, some further clarifications on existing case practice with regard to aid in outermost regions will be provided.

The abolishment of the notification requirements and the regulatory codification / clarifications intended with this initiative will reduce regulatory costs without a significant impact on the amount of State aid granted or on competition in the internal market.

The Commission estimates the potential annual regulatory cost-savings that can be achieved by this initiative at several million Euros for companies and public authorities. The Commission will provide a more precise estimate in the explanatory memorandum. As part of the REFIT agenda, the Commission will work with Member States and stakeholders to check whether the potential savings will be achieved in practise.

B. Option Mapping

As already indicated in recital 1 of the GBER, the new provisions on ports and airports are necessarily based on a codification of existing practice (33 cases on ports and 54 on airports). In addition, the compatibility criteria for airports have to be based on the criteria contained in the Guidelines on state aid to airports and airlines (OJ C 99, 4.4.2014, p. 3). The margin of manoeuvre for the Commission is therefore very limited as regards the compatibility criteria to be included in the GBER. The main element where discretion can be exercised is where to set the thresholds below which measures do not need to be notified. The Commission will therefore use the data collected (see below).

Proportionality check

The codification of the Commission's decision-making practice increases legal certainty for public authorities and other stakeholders. The exemption from prior notification reduces the administrative burden involved in filling in and analysing notifications for cases that do not create significant distortions of competition. The initiative is therefore proportionate to solve the underlying problem.

C. Data collection and Better Regulation instruments

Data collection

Data is required mainly in order to determine the appropriate threshold below which measures can be exempted from notification. The Commission will make use of the data collected in its case practice and its previous policy initiatives in the field of State aid, in particular in the impact assessment for the Guidelines on state aid to airports and airlines (SWD(2014)42), as well as the data available from DG MOVE. The thresholds will be submitted to a thorough consultation process.

Consultation approach

As required by the legal basis of the GBER (Council Regulation 994/98 republished and revised as Council Regulation (EU) 2015/1588 of 13 July 2015), the Commission will carry out two public consultations on drafts of the Regulation and will consult Member States in Advisory Committee meetings on both drafts. Stakeholders are also invited to provide feedback to this roadmap.

Will an Implementation plan be established?
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <p>The new block exemption provisions for ports and airports reduce implementation challenges of the State Aid rules. Furthermore, the Commission Regulation is directly applicable in the Member States.</p>
Will an impact assessment be carried out for this initiative and/or possible follow-up initiatives?
<p>No. An impact assessment is not necessary because the Commission is not developing a new policy and the measures are not expected to have significant economic, social or environmental impacts, but will reduce regulatory costs.</p> <p>The Commission is in fact following up on its intention expressed in recital 1 of the GBER to include ports and airports in the GBER as soon as sufficient case experience has been collected. The Commission will therefore codify the existing decision-making practice. The simplification by introducing a block exemption for these kinds of measures eases administrative burden for public authorities, other stakeholders and the Commission. The inclusion in the GBER will not change the substantive conditions on when State aid can be granted and therefore has no significant impact on the amount of State aid granted and competition in the internal market.</p> <p>The thresholds for notifications will be based on the extensive information provided by case practice and will be submitted to a thorough consultation. Similarly, for the outermost regions, the initiative is mainly an administrative simplification and, compared to the current practise, will not have significant impacts on the amount of State aid allowed under the EU State aid rules.</p>